

Petitioner William Krisstofer Wolf
Reg.No 13660-046
Federal Detention Center
PO Box 13900
Seattle, WA. 98198-1090

FILED

APR 02 2018

Clerk, U S District Court
District Of Montana
Billings

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF MONTANA

BILLINGS DIVISION

WILLIAM KRISSTOFER WOLF
Petitioner

vs.

UNITED STATES OF AMERICA
Respondant

) CAUSE NO:
) CR-15-49-BLG-SPW
) ~~CV-18-02-BLG-SPW~~
)
) MOTION FOR DECISION
)
)
)
)

COMES NOW, the Petitioner William Krisstofer Wolf, pro se,
in the above captioned cases and moves this Court for an Order
Granting Petitioner's MOTION FOR DECISION.

It is well established under 28 U.S.C. § 2266 (6)(1)(C)(i)
(acknowledging "best interest of...the [habeas corpus] applicant
in a speedy disposition of the application.") that an Order For
Decision is the proper remedy for ensuring a prompt hearing.

Procedures Vol. 1: Chapter 21 Conduct of Hearing

§ 21.1 Preparing for the hearing 1 [b] Continuances; speedy
hearing.

"Taken together, therefore, the mandatory language of
Rule 8 (c)'s prompt-hearing requirements, the long standing pre-
ference for promptly remedying unlawful incarceration and the
partial analogy to the constitutional right to a speedy criminal
trial afforded incarcerated petitioners a basis for seeking

habeas corpus proceedings least their right to prompt release from unlawful custody be mooted by unnecessary delay."

This petition warrants such a prompt and speedy action based on, but not limited too, the admitted fact, on the part of the government's prosecutorial team, that the government's witnesses knowingly perjured themselves on material facts of the case.

That the government's prosecutorial team knew of the perjured testimony at trial and failed to correct or illicit truthful testimony, as no new evidence was submitted to the Court after the conviction or at sentencing, where the prosecutorial team admitted to the perjured testimony. [ER 900] [cite omitted]

That the government's prosecutorial team vouched for the credibility of the witnesses, and the defense council rendered ineffective assistance.

The Ninth Circuit and the United States Supreme Court have upheld the long standing position of perjured testimony's effect on the due process of the law."

"Few rules are more central to an accurate determination of innocence or guilt that the requirement...that one should not be convicted on false testimony." (Sanders v. Sullivan, 900 F.2d 601, 607 (2nd Cir. 1990) Quoted in Ortega v. Duncan [cite omitted])

"it is established that a conviction obtained through use of false evidence, known to be such by representatives of the State, must fall under the fourthenth Amendment" Napue v. Illinois, 360 U.S. 264 Id at 269, 79 S. Ct. 1173 (citing Mooney v Holohan, 294 U.S. 103, 55 S Ct. 340, 79 L Ed.2d 791 (1935))

"The same result obtains when the State, although not soliciting false evidence, allows it to go uncorrected when it appears."

"Knowing use of perjured testimony by the government constitutes a due process violation" See United States v. Page 231 F.3d 488 (9th Cir 2000)

"The word 'willful' simply means that the witness made the allegedly perjurious statement with the consciousness that it was false;" People v. Tolmachoff, 58 Cal. App. 2d 815, 821 138 P.2d 61 (1943) quoted in Rivera v. Lynch 816 F.3d 1064 (9th 2000)

"Untrue testimony is 'material where', if believed, [it] would tend to influence or affect the issue under determination." U.S.S.G. § 3C1.1, Application Note 6; United States v. Magana-Guerrero, 80 F.3d 398, 400 (9th Cir 1996)

"The Ninth Circuit has indeed allowed habeas relief based on false testimony regardless of the knowledge of its falsity." Maxwell v. Roe, 628 F.3d, 486, 499-500 (9th Cir 2010)

"The question is not 'whether the defendant would more likely than not have received a different verdict if the false testimony had not been presented, but whether the defendant recieved a fair trial, understood as a trial resulting in a verdict worthy of confidence.'" Jones, 691 F.3d at 1102 [cite omitted]

"It is not simply because perjured statements are false that they lack First Amendment protection. Perjured testimony 'is at war with justice' because it can cause a court to render a 'judgement not resting in truth.' Perjury undermines the function and province of the law and threatens the integrity

of judgements that are the basis of the legal system. Unlike speech in other contexts, testimony under oath has the formality and gravity necessary to remind the witness that his or her statements will be the basis for official governmental action, action that often affects the rights and liberties of others. Sworn testimony is quite distinct from lies not spoken under oath and simply intended to puff up oneself." United States v. Alvarez: February 22, 2012; United States Supreme Court 2013; 567 U.S. 709:: [Per Kennedy, J., Roberts, Ch. J., and Ginsburg, and Sotomayor, JJ.]

The Ninth Circuit, along with other Circuit Courts have made it clear the prosecutor may not vouch for the credibility of a witness.

"This court has previously held that "[a]s a general rule a prosecutor may not express his opinion of the defendant's guilt or his belief in the credibility of Government witnesses." *Dubria v. Smith*, 197 F.3d (CA9 1999) p402; quoting *United States v. Molina*, 934 F.2d 1449, 1444 (9th Cir. 1991)

"By effectively calling Delgado a liar and declaring that she had lied to investigating government agents, the prosecutor threw the weight of his own credibility as a representative of the United States behind his (personal) [italics] opinion- giving his personal opinion" much weight...when they should properly carry none." *Berger* 295 U.S. at 88, 55 S.Ct. 629 quoting *United States v. Delgado*, 631 F.3d 685, (CA 5 2011)

"The prosecutor wrongfully put her "personal reputation behind the testimony of its witness." *Littrell*, 439 F.3d at 882.

"In this case counsel for the government put her own credibility at issue by vouching for the witness." United States v. Bass, 712 F.Supp. 2d 931 (D.Neb. 2010)

Furthermore, the Ninth Circuit, along with other Circuit Courts, have established certain prerequisites and/or guidelines defining aspects of ineffective assistance of counsel that are applicable to this petition.

(Creation of Presumptions) "In Cronin, the United States Supreme Court..."The second is when counsel entirely fails to subject the prosecutions case to meaningful adversarial testing." United States v. Cronin, 466 U.S. 648, 104 S.Ct. 2039, 80 L.Ed.2d 657 (1984)

"Inexplicably, trial counsel failed to cross-examine the twins about this inconsistency..." Sparman v. Edwards, 26 F.Supp. 2d 450 p 454 (E.D.N.Y. 1997)

"We agree with the district court that counsel's failure to impeach Vogelpohl was a breach with so much potential to infect other evidence that, without it, there is a reasonable probability that the jury would find reasonable doubt of Driscoll's guilt. Driscoll v. Delo, 71 F.3d 701 (CA 8 1995) p711.

"There is an additional safeguard against miscarriages of justice in the criminal cases,...[it] is the right to effective assistance of counsel which, as the Court has indicated, may in a particular case be violated by even an isolated error of counsel if that error is sufficiently egregious and prejudicial. Murray v. Carrier, 477 U.S. 496, 91 L.Ed2d 397, 106 S.Ct. 2639 (1986) QUOTING United States v. Cronin, 466 US 648.

"In some cases, a single error may render counsel performance constitutionally defective." *Nero v. Blackburn*, 597 F.2d 991, 994 (5th 1994)

The Courts have long held that a prompt hearing is warranted when there are egregious constitutional violations and intolerable restraints.

(policy in favor of "avoid[ing] unnecessary delay in granting [habeas corpus] relief that is plainly warranted"). *Granberry v. Greer*, 481 U.S. 129, 135 (1987)

("Under our constitutional framework, the great constitutional privilege of habeas corpus...has historically provided a prompt and efficacious remedy for whatever society deems intolerable restraints'.") *Wingo v. Wedding*, 481 U.S. 461, 468 (1974)

Part VIII Post judgement Proceeding; appeals Vol 2
C35 Initiating the appeal § 35.1 Final Order. "Historically, habeas relief is available to provide a prompt and efficacious remedy for intolerable government restaring." *United States v. Allen*, 1998 U.S. App Lexis 1952 @ 4 (10th Cir Feb 12 1998)

Petitioner Wolf, having brought colorable claims, based in fact, asserts he is entitled to an evidentiary hearing.


"The majority holds that Phillips is entitled to an evidentiary hearing because he has made colorable claims of ineffective assistance of counsel, perjury, and cumulative error." *Phillips v. Woodford* 267 F.3d 966 163 F.3d 1073, 1082 (9th Cir 1998)

"[w]here the petitioner establishes a colorable claim for relief and has never been afforded a state or federal hearing

on this claim, we must remand to the district court for a
evidentiary hearing." Earl v. Stokes 423 F.3d 1024 (CA 9 2005)
[Citing Standweitz v. Woodford, 365 F.3d 706, 708 (9th Cir 2004)]

Therefore, Petitioner Wolf respectfully request this Court
use the remedies available under the rules governing the habeas
corpus process, and at the very least Grant this MOTION FOR
DECISION, schedule a prompt evidentiary hearing, which will affirm
and confirm the various colorable claims presented, and/or in the
best interest of justice, based on the egregious constitutional
violations, Overturn the conviction, dismiss all charges with
prejudice and Order Petitioner Wolfs immediate release.

Respectfully Submitted

 3.29.18

William Krisstofer Wolf

Reg. No. 13660-046

Federal Detention Center

P.O. Box 13900

Seattle, WA 98198-1090

CERTIFICATE OF SERVICE

I WILLIAM KRISSTOFER WOLF, hereby certify that I have served a true copy correctly of the following, by placement in the Inmate Mail:


MOTION FOR DECISION

Service of process is deemed complete at the time of delivery to the prison authorities for forwarding to the court under Houston v. Lack 101 LED. 2.d 245 (1998) confirms that such service upon parites to litigation and to His/Her attorney of record, by placement in a sealed postage paid envelope addressed to:

Clerk of U.S. District Court
2601 2nd Ave. N, Ste 1200
Billings, MT 59101

And deposited in the Untied States mail maintained by the Federal Detention Center at Seattle WA. All requirements of service process have been fulfilled as of:

29th day of March 2018
Federal Detention Center-Seattle
P.O. Box 13900
Seattle, Wa. 98198-1090

Name:  3.29.18
BOP ID: 13660-046